Denver Law Review

Volume 9 | Issue 10 Article 2

1932

Vol. 9, no. 10: Full Issue

Dicta Editorial Board

DICTA

VOLUME 9

1931-1932

DICTA

20 cents a copy $1.75 a year

AUGUST, 1932

Published monthly by the Denver Bar Association and devoted to the interests of the Association.

Address all communications concerning:

Editorial Matters, to Dicta, Louis A. Hellerstein, Editor-in-Chief, 1020 University Bldg., Denver, Colo.

Advertising, to Dicta, Norman W. Baker, Business Manager, 728 Gas and Electric Bldg., Denver, Colo.

Subscriptions, to Dicta, John A. Carroll, Secretary Denver Bar Association, 1022 Midland Savings Bldg., Denver, Colo.

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Vol. IX AUGUST, 1932 No. 10

+ + + *Dicta Observes* + + +

FURTHER LIGHT ON THE PRACTICE OF LAW*
In Alabama

The Legislature of Alabama passed an Act regulating and defining the practice of law, approved July 20, 1931.

It is interesting to note that the practice of law by individuals and collection and adjustment agencies and bureaus in that line of business, is covered by paragraph (d) of Section 2 of the Act which reads as follows: "Whoever * * *

(d) As a vocation, enforces, secures, settles, adjusts or compromises defaulted, controverted or disputed accounts, claims or demands between persons with neither of whom he is in privity or in the relation of employer and employee in the ordinary sense; is Practicing Law."

On May 26, 1932, the Supreme Court of Alabama affirmed the Circuit Court of Jefferson County in excluding and prohibiting Bernard Berk, a collection agent, from the practice of law in the collection business until he has become a lawyer. (*State of Alabama, ex rel, R. Dupont Thompson vs. Bernard Berk.*)

In affirming the judgment the Supreme Court held that it is the practice of law per se whenever the collection agent as a vocation solicits for adjustment, collection or compromise of defaulted, controverted or disputed accounts, claims or demands, he not being at that time an employee in the ordinary sense of the holder of the claim, and in the handling of such claim the collector threatens suit, collects collection fees from the debtor, or whenever in his judgment expedient he turns over *to his attorney* his claim for prosecution in court.

The Act of the Legislature above referred to is specific in including the Justice of the Peace Court as a tribunal where one may not practice law unless licensed so to do.

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*By ROY O. SAMSON, of the Denver Bar.

In Washington

Sager Stanley was a resident of Woodland, Cowlitz County, Washington. He was a notary public and a licensed and bonded real estate agent and broker. He had

"engaged in the business of drawing various instruments for compensation, prepared community property agreements for compensation, and in connection with the preparation of such instruments he advised clients that upon the death of one of the parties to the agreement the property would accrue to the other without the necessity of probating the estate. He had drawn wills for compensation and had been paid for drawing many warranty and quitclaim deeds. If the clients did not know what kind of a deed they wanted, he advised them of the different kinds. He prepared claims of lien for others and gave advice as to the place and time they should be filed and upon whom and when they should be served. He also drew conditional sales contracts, informed clients under what conditions the property was being sold and the respective rights of the parties. He advised clients of the necessity, time and place of filing chattel mortgages and conditional sales contracts. He drew other contracts for compensation. He believed he had the right to draw articles of incorporation and would do it for compensation. He gave legal advice for nothing."

Stanley was thereafter made defendant in a suit to enjoin him from practice of law without a license. The superior court of Cowlitz County found that the conduct of the defendant in so carrying on his business was practicing law, and enjoined him therefrom.

The decree of the court, however, was without prejudice to the right of the defendant so long as he remained a duly authorized Notary Public to take acknowledgments and affidavits and to do the necessary scrivener work in connection therewith and to draw up simple deeds, simple mortgages and simple contracts and similar simple instruments.

An appeal was taken from that portion of the decree and the Supreme Court held that in view of the proof that Stanley was giving legal advice, the trial court erred in holding that the decree should be without prejudice to his right to draw simple deeds, simple mortgages, simple contracts and similar simple instruments and that that portion of the decree from which appellant had appealed was erroneous and should not have been embodied therein, and the case was remanded with instructions to modify the decree in accordance with the opinion. (*Paul et al vs. Stanley,* 12 Pacific (2nd) 401.)

In Oklahoma

Oklahoma seeks an interpretation of the practice of law by collection agencies and presents the following situation:

"A corporation was organized as a so-called Credit Exchange, for the purpose of furnishing its stockholders or members with credit information and collection service. It secures its business from its members and solicits business houses, professional men and others, who have accounts to be collected, to become stockholders or "members." It does a very large collection business and, when ordinary methods of collection fail, secures permission from the creditor to start suit. The suit is started in a municipal court of inferior jurisdiction by employees who are not lawyers, who file the necessary pleadings, and where there is no appearance, take default judgments.

This Credit Exchange retains a firm of attorneys, who furnish it general advice, attend to its corporate matters, draft forms for it, and attend to the general legal work that comes up in connection with the operation and conduct of its business.

If there is an appearance in the cases which the Credit Exchange has sued, the matter is set for trial and the firm of attorneys is engaged to handle the contested case and secure judgment. These attorneys bill the exchange for their services in each case, the amount of which bill is added to the charge made to the client by the exchange."

The question is presented as to whether the attorneys may properly accept employment to try these contested cases, or whether their employment by such a lay intermediary, who solicits business for itself (and, indirectly, for these lawyers) is prohibited by Canon 35. It is argued that the lawyers are not assisting the Credit Exchange to practice law, because it is contended that the work done by the credit exchanges and its lay employees, in preparing the pleadings, filing suit, etc., in the municipal court, is not practicing law. In support of this position it refers to an opinion of the attorney-general of the state, who holds that one may practice in the *municipal court* in question without being a duly licensed attorney, though that opinion admits that the question had not been directly passed upon by the supreme court of the state.

A lawyer is rendering professional services, when he tries an action in a court of law irrespective of whether or not the statutory law governing that particular court prohibits any one, other than lawyers and litigants, from conducting such trials.

The conduct described in the question states a clear case of the professional services of a lawyer being controlled and

exploited by a lay agency and such conduct is contrary to Canon 35. The express exemption from condemnation in Canon 35 of "The established custom of receiving commercial collections through a lay agency" has no application since an actual trial in a "court of law" is not a "commercial collection," even though the subject matter of such trial may be the same as that of an attempted commercial collection.

In addition the committee is of the opinion that the institution of suits on behalf of others in *any* court of law is "practicing law," irrespective of whether the statutory law governing that particular court prohibits the institution of such suits by persons other than lawyers or not. Lawyers should not aid or participate in any way in the practice of law by laymen or lay agencies, nor should they in any way sanction the same or profit therefrom. The conduct described in the question is improper, for the attorneys, by their actions, are fostering the practice of law by a lay agency, as well as aiding therein and profiting therefrom.

(From opinions of Committee of American Bar Association on Professional Ethics: Okla. State Bar Journal, June, 1932.)

In Massachusetts—Judiciary vs. Legislative Control

On March 29, 1932, the Massachusetts State Senate submitted to the Supreme Judicial Court of that state certain questions relating to a bill dealing with the admission of persons to practice law. In answer to the Senate the court stated among other things:

"There is nothing in the Constitution, either in terms or by implication, to indicate an intent that the power of the judiciary over the admission of persons to become attorneys is subject to legislative control. . . . The inherent jurisdiction of the judicial department over attorneys, although recognized by statute, is nevertheless inherent and exists without a statute. . . . Numerous statutes have been passed making provision in aid of the judicial department in reaching a proper selection of those qualified for admission as attorneys to practice in the courts. . . . They have been enacted to enable the courts to perform their duties. They have been enacted, also, in the exercise of the police power to protect the public from those lacking in ability, falling short in learning, or deficient in moral qualities, and thus incapable of maintaining the high standard of conduct justly to be expected of members of the bar. . . . Statutes respecting admissions to the bar, which afford appropriate instrumentalities for the ascertainment of qualifications of applicants, are no encroach-

ment on the judicial department. They are convenient, if not essential. . . . When and so far as statutes specify qualifications and accomplishments, they will be regarded as fixing the minimum and not as setting bounds beyond which the judicial department cannot go. . . ."

In Colorado

"It is elementary that a corporation can only appear by an attorney. A corporation is incapable of personal appearance. . . . A wise public policy has uniformly maintained these or similar statutory provisions regulating the practice of law for the protection of citizens and litigants in the administration of justice, against the mistakes of the ignorant, on the one hand, and the machinations of unscrupulous persons, on the other, and as long as these salutary provisions remain as the law of the state for our guidance, we cannot allow an action to be commenced and prosecuted through the courts by one who is denied the privilege of an attorney and counselor at law." (*Bennie vs. Triangle Ranch Company,* 73 Colorado @ 588.)

It is the opinion of the writer, however, that in all of these collection agency situations, where the attorney is a salaried employee of the agency, it is not possible to reach a point where the attorney can divest himself of his relation of paid employee and assume his character of the disinterested attorney and counselor. The agency practices law when it pays an employee to perform legal services on its behalf and for its direct pecuniary benefit, and the role of paid employee or agent cannot be discarded as a matter of convenience.

In General

A recent publication by Frederick C. Hicks, Professor of Law, Yale University, "Organization and Ethics of Bench and Bar," contains a very complete resume of cases dealing with the unauthorized practice of law. More than twenty-five pages are devoted to the subject and reference is made to cases in California, New York, Tennessee, Georgia and Illinois, with a great number of additional cases cited.

Make the most of yourself, for that is all there is of you.—*Emerson.*

The function of culture is not merely to train the powers of enjoyment, but first and supremely for helpful service.—*Bishop Potter.*

Be a life long or short, its completeness depends on what it was lived for.—*David Starr Jordan.*

July 20, 1932.

Mr. Hamlet J. Barry,
Chairman of the Special Committee of the Denver Bar Association on Elimination of Unnecessary Delay in Procedure,
904 Equitable Building,
Denver, Colorado.

My dear Mr. Barry:—

Your letter under date of March 30, 1932, addressed to me, was duly received and contents noted, together with the report of your special committee, consisting of Kenneth Robinson, Carle Whitehead, Bentley McMullin, Louis A. Hellerstein and yourself, as Chairman, also the minority report signed by Carle Whitehead.

The said report was presented by me to the next meeting of the Judges en banc, considered and discussed at some length, and the matter was held over for further consideration. I further call your attention to the fact that the articles referred to under paragraph 5(c) by Carle Whitehead, Esq., in collaboration with Albert L. Vogl, Esq., appearing in the January issue of "Dicta" on page 76, and also the article by Hudson Moore of the Denver Bar, appearing in the March issue of "Dicta" on page 129, were also considered and the matter came on for further consideration before the Court en banc on the 14th day of April, 1932.

I wish to express to you and each member of the Committee, also to Mr. Albert L. Vogl and Mr. Hudson Moore, the appreciation of the Court for your manifest and painstaking care in preparing this report and these articles, which have been carefully considered and given the attention they deserve. However, after consideration of the subject, the Court en banc was unanimously of the opinion that the practice as laid down by our Code of Civil Procedure and the Rules of Practice of the District Court of this district, as heretofore printed and revised to date, are better—all things considered—than the changes suggested.

Among the reasons spoken of by one or more of the Judges, are as follows:—

1. In our opinion, there is no needless delay at the present time in civil trials resulting from the filing of successive motions and demurrers. Such motions and demurrers can be promptly noticed for hearing and heard with the result that notwithstanding the great majority of them are overruled as not well taken, but nevertheless, the argument, discussion and citation of authority usually results in a better understanding of the case by Court and counsel.

2. The point should not be overlooked that some reasonable delay in getting to issue is not, on the whole, time lost as it gives litigants an opportunity to consult with their respective counsel, and through them, with each other, with the result that, on the whole, the records of the Court show that many times as many cases are settled amicably and compromised after suit has been filed than are actually contested.

3. Referring particularly to the so-called "Single Calendar System" as contrasted with the "Multiple System", as referred to in Mr. Hudson Moore's said article, it is said among other things on page 132 that "The stock objection to the Single Calendar System is that a judge who hears a motion or demurrer is best qualified to try all issues in the case". The consensus of opinion of the Court en banc was that that objection as applied to this Court under present conditions is well taken.

4. In connection with the foregoing, it may be that the "Single Calendar System" may work very satisfactorily in some jurisdictions where they have a greater volume of business, and a greater number of judges, such as Chicago, Illinois or Los Angeles, California, but we understand from hearsay, through attorneys and other information, that those courts that operate under this "Single Calendar System" are much farther behind with the dispatch of their business relatively, than this Court.

5. We are unanimously of the opinion, after checking over our dockets and records of the Clerk's Office, that there is no "needless delay" in getting cases at issue and trial where the attorneys in the cases avail themselves of their right and privilege to promptly move for the setting and hearing of each motion and demurrer as soon as it is filed, and promptly

moving for setting the case for trial to court or jury as soon as the case is at issue.

6. Among the objections considered by the Judges en banc to the "Single Calendar System" is the fact that that would entirely eradicate and change our system of assigning of cases to different Divisions in open Court by lot, as provided by Rule 2 of the Court Rules, which in our opinion is working very satisfactorily, both to Court and counsel.

Respectfully submitted,

GEO. F. DUNKLEE,
Presiding Judge of the
District Court.

AN APOLOGY

Dicta regrets that in the last issue the author of the article entitled "New Provisions of the Revenue Act of 1932 Relative to Federal Income Taxes" was noted as "Arthur J. Lindsay" instead of "Alexander J. Lindsay," who was the writer of the same.

DICTA DISSERTATIONS

Our destiny is our own and it must be worked out—perhaps in fear and trembling—in our own way. If there be a cherished American doctrine the controlling question must be: Is it right? If yea, then let us stand by it like men; if nay, have done with it and move forward to other issues.—*William McKinley.*

Let us not concern ourselves about how other men will do their duties, but concern ourselves about how we shall do ours.—*Lyman Abbott.*

However good you may be you have faults; however dull you may be you can find out what some of them are, and however slight they may be you had better make some—not too painful, but patient efforts to get rid of them.—*Ruskin.*

You are either a magnet that attracts all things bright, desirable, healthy and joyous—or one that draws all things disagreeable, gloomy, unhealthy and destructive.—*Quigley.*

THE LAW OF THE VETERAN

By John C. Vivian of the Denver Bar

BENEFITS to veterans of the World war and other wars have grown so rapidly with the continual enactment of legislation by a beneficent government that many of the former defenders of the nation are even now unapprised of the advantages which accrue to them because of their military service.

More progress has been made in behalf of those men and women who participated in the World war than the veterans of other wars because the demands of the last conflict were greater than ever before.

COMPENSATION

Compensation is available to those men and women who served between April 6, 1917 (the date of our entry into the war) and July 2, 1921, when the hostilities were officially declared at an end. It is payable for disability occurring in the service between the aforesaid dates. It is also available to a soldier suffering a disability prior to April 6, 1917, provided he was in continuous service following that date.

Compensation is also payable where a beneficiary suffers any injury or an aggravation thereof as a result of hospitalization or medical or surgical treatment lawfully awarded by the administration and not the result of his own wilful misconduct, provided, however, such cases may be compensated in the event that the veteran has become helpless or bedridden as a result of such disability. Should death result, service connection will be granted and dependency compensation paid to those entitled to it. Application for the latter must be made within two years after the injury or aggravation was suffered or death occurred or after June 7, 1924, whichever is the later date.

Another requirement is that the applicant must have been honorably discharged from the military establishment.

The disease must have been incurred in, traceable to or aggravated by military service resulting in physical or mental disability, provided such disability was not caused by wilful misconduct.

HOSPITALIZATION

Veterans of any war, military expedition or occupation, including women who served as contract nurses, between April 21, 1898, and February 2, 1901, are eligible under the law for hospitalization and reimbursement of burial expense.

All such claims are handled by the several regional offices of the Veterans' Administration, at least one of which is located in each state.

Hospitalization is furnished by the government gratis, to all World war veterans who are suffering from service connected disabilities.

Veterans of any war not dishonorably discharged are entitled to hospitalization in government institutions, provided facilities are available.

Allied veterans are entitled to treatment in hospitals only for service disabilities on prior authority from the government concerned, under treaty arrangement.

Non-service connected cases which are financially unable to clothe themselves while in hospitals are furnished the necessary garments by the Veterans' Bureau.

Service connected disabilities may receive treatment by designated examiners in the neighborhood of their homes when necessary. Out patient treatment is also provided in regional offices.

Hospitalization is obtained by direct application to the regional office having jurisdiction in both service and non-service connected cases. The request should be made by the veteran supported with a doctor's statement showing what disease or injury he is suffering from and describing his condition in definite terms. Forms for this purpose are available at the regional office.

There is no authority under the law for the treatment of non-service connected disabilities outside of government hospitals except for women veterans. If an emergency exists, the veteran or his physician, or both, should telephone the chief medical officer and give him all the facts. If the case is a service connected one, the medical officer has ample authority to arrange for immediate care. If the condition is not service connected, this officer is limited to such government facilities as are available. As long as there is a shortage of hospital

beds, which is the situation at present, the immediate care of non-service connected cases is practically an impossibility.

The government will pay transportation expenses from the home of the veteran to the nearest hospital when previously authorized by the Veterans' Bureau. The law permits the administration to reimburse the veteran for unauthorized medical treatment only in those cases where the disability is service connected and an emergency existed.

It should be borne in mind that the veteran should not present himself directly to a government hospital but should follow the procedure outlined above. Authority from the Veterans' Bureau for hospitalization as well as traveling expenses must positively be secured from the Regional Office before the veteran starts on his journey to the hospital.

PHYSICAL EXAMINATIONS

The law confers upon the administration the right to examine or re-examine a government beneficiary at such time or place as may be reasonably required. If the veteran neglects, refuses or obstructs such examination, his right to compensation may be suspended during the period of neglect, refusal or obstruction and any additional disability resulting from a refusal to accept treatment will not be compensated.

DISABILITY ALLOWANCE

Disability allowance is available to those men of the World war whose defect is permanent and not attributable or traceable to the service and not the result of his own wilful misconduct. It varies in amount from $12.00 a month for a 25 per cent disability to $40.00 a month for a total disability. It was enacted in order to provide what is virtually a pension for those men who are disabled, not as a result of service or who cannot establish service connection.

Any honorably discharged person who entered the service prior to November 11, 1918, who served 90 days or more during the World war and who is entitled to exemption from payment of income tax for the preceding year and who has a permanent disability in excess of 25 per cent not the result of his own wilful misconduct, is eligible for the award.

INSURANCE

Government war risk insurance is payable to the beneficiaries of those men who took out policies while they were in the service or since. This protection is also paid to the insured if he become permanently and totally disabled, at the rate of $5.75 per month for every $1,000.00 of insurance carried.

If the government denies the claim for insurance on account of total permanent disability or death, suit may be brought against the United States in the Federal District Court. No action may be maintained for compensation as distinguished from insurance.

Suits of this character are of a contingent nature so far as the attorney's fee is concerned. The latter is allowable up to 10 per cent of the amount recovered in the discretion of the court. The action may be maintained only after a claim has been submitted to the administrator of veterans affairs and denied by him.

VETERANS ADMINISTRATION

The veterans administration has complete charge of all affairs relating to veterans of any and all wars in which the United States has been engaged. This includes the Veterans and Pension Bureaus and the National Soldiers Homes. Each is in charge of an assistant administrator accountable to the administrator of veterans affairs.

CLAIMS

Briefly, all claims arising out of or after the death of a veteran are handled by central office in Washington while those for hospitalization, compensation, disability allowance, and similar items affecting the disabled, are the concern of the regional offices with the right of appeal to a board of review, divided into areas and the administrator's board of appeals as a final resort. The area board of review office for the West is located at San Francisco.

When a veteran dies from a service connected disability, compensation may be paid to his widow, children or dependent parents. Such payments to a widow continue until her remarriage or death, to a child until it reaches the age of

eighteen or marries and to parents during the period of dependency.

When a person receiving or who is entitled to receive compensation or insurance dies, the amount due and accrued is payable to the estate of deceased. If the sum involved is in excess of $1,000.00 it is paid to the administrator or executor thereof. If less than this amount, it is relinquished in accordance with the intestacy law of the state in which the decedent had his last legal residence.

Disability compensation may be allotted by a beneficiary of the administration for the benefit of any person entitled thereto when the payee has been hospitalized for treatment by the government for 60 days or more. Such compensation will likewise be apportioned under regulations to wives and children of estranged parents or those not living together.

ATTENDANT ALLOWANCES

An additional allowance of not to exceed $50.00 a month may be granted during a period when personal assistance is needed by the veteran, but not while hospitalized at government expense. To secure such allowance it must be shown that the disabled person needs assistance in dressing, bathing, keeping in a presentable condition and feeding and protecting himself from hazards or dangers incident to his daily environment.

APPLIANCES

The administration will furnish orthopedic and prosthetic appliances (artificial limbs, braces, etc.) without cost and as often as necessary in all service connected cases requiring the same, and non-service connected cases requiring hospitalization when the veteran is financially unable to furnish them.

LOSS OF WAGES

Any veteran undergoing physical examination or observation by the Veterans Bureau may be paid $2.65 per day as a partial reimbursement for his loss of wages. Total reimbursement, when added to compensation payable, cannot exceed $80.00 in any one month.

BURIALS

Funeral and burial expense of $100.00 and an American flag, are allowed where a veteran dies subsequent to April 6, 1917, provided he is drawing compensation from the government. Any veteran of any war not dishonorably discharged who leaves an estate of less than $1,000.00 is likewise entitled to this benefit. All postmasters at county seats are authorized to furnish flags with which to drape the casket.

If death occurs while a beneficiary is ensconced in a governmental institution, the veteran will be allowed transportation expenses to the place of burial.

Burial may be had in a national cemetery if desired by the persons entitled to the custody of the body. Application must be made to the superintendent of national cemeteries, Washington, D. C., and a certified copy of discharge forwarded.

HEADSTONES

Headstones will be furnished for unmarked graves of soldiers who served in any branch of the service when application is made to the quartermaster general of the Army. They will be shipped, freight prepaid by the government, to the nearest railroad station or steamboat landing.

GUARDIANSHIP

Guardianship under state statutes is necessary where the beneficiary is a minor or mentally incompetent.

INSPECTION OF FILES

All records relating to a claim for insurance or compensation are confidential except to the claimant or his duly authorized representative and only then as to matters relating to the veteran himself, provided that such disclosure would not be detrimental or injurious to his physical and mental well-being.

Accredited service organization representatives are authorized to review case folders when requested to do so by claimants.

Development of evidence in the prosecution of claims is a technical subject and must conform to the law, and the

rules and regulations promulgated by the veterans administration.

DEPENDENCY COMPENSATION

Additional compensation on account of dependents is payable to a veteran rated as temporary. No additional allowance is made for those on a permanent basis. Widows and children or dependent parents of a veteran who died of a service incurred disability are likewise entitled to allowances on this account.

ADJUSTED COMPENSATION

Adjusted compensation, otherwise known as the bonus, is available to thousands of veterans who have not applied for it. Applications may be made until January 2, 1935. The certificate has a loan value up to 50 per cent of the face value thereof.

PENSIONS

The director of pensions, under the supervision of the administrator of veterans affairs, has complete jurisdiction over adjudication of pension claims.

SOLDIERS HOMES

National homes for disabled volunteer soldiers are now a part of the veterans administration. Honorably discharged soldiers, sailors and marines who are disabled and who have no adequate means of support and who, by reason of such disability are either temporarily or permanently incapacitated from earning a living, are entitled to the benefits of these homes. Eligibility for admission to a Home is determined at the institution where application is made.

There is but one good fortune to the earnest man. This is opportunity; and sooner or later, opportunity will come to him who can make use of it.—*David Starr Jordan.*

We pass for what we are. Character teaches above our wills. Men imagine that they communicate their virtue or vice only by overt actions, and do not see that virtue or vice emit a breath every moment.—*Emerson.*

✦ ✦ ✦ *Dictaphun* ✦ ✦ ✦

BIG REVIVAL! BIG REVIVAL!! FOR TWO ISSUES ONLY!!!

In our exhausting search for material, a search by the way that has made Dictaphun the most widely read column of its kind published in Dicta, we unearthed a vein of stories of the early and pre-modern Colorado bar. They were good stories then and still are. We've laughed at some of them in the face of a thousand renewed tellings. Besides, if you don't like them you don't have to read them and we have filled our space anyway. That, as a well known newspaper would and does say, is that.

NO. 1—THE ADMISSION TO THE BAR STORY.

Mitchell Benedict and Judge James F. Welborn constituted the first board of law examiners for the Second Judicial District, which included Denver. Judge George Rogers was admitted to practice August 27, 1881, having successfully undergone this gruelling test of his capabilities:

Mr. Benedict: "What is the legal rate of interest in Colorado; it is seven per cent per annum, is it not,"

Mr. Rogers: "That is my present information, sir."

Mr. Benedict: "Here is your certificate, young man; take it over to Judge Welborn and he will sign it also."

NO. 2—A CHARLES S. THOMAS STORY

Joel F. Vaile: "Will the court set the case of Roe v. Denver & Rio Grande Railroad Co. for trial at the May term?"

Judge Hallett (of sainted memory): "The May docket is now complete, Mr. Vaile."

Mr. Vaile: "Then, might I not have a day in June?"

Judge Hallett: "There will be no days in June."

Charles S. Thomas (aside you may be sure): What is so rare as a day in June?"

NO. 3
THE FAMOUS CAN'T SEE YOU JUDGE STORY

The term at Del Norte had opened and all the attorneys except John G. Taylor had recovered from the night's sojourn at Shaw's Springs.

Judge Hallett (o. s. m.): "Mr. Taylor, you are intoxicated, sir."

Mr. Taylor: "Your Honor, I'm all right; I can—"

Judge Hallett: "Mr. Taylor, you are intoxicated, sir; I can't hear you."

Mr. Taylor: "Thas all right, Judge; you've got nothing on me; I can't see you."

NO. 4
THE SAME MR. TAYLOR BUT ANOTHER JUDGE

Denver District Court, Peter L. Palmer, Judge, presiding.
The Court: "Sit down, Mr. Taylor."
Mr. Taylor: "If the Court pleases, I must be heard, I——"
The Court: "Sit down, Mr. Taylor, you're drunk."
Mr. Taylor: "Thas the first time I ever knew this court to be right."

NO. 5
THE ONE ABOUT THE JUDGE AND HIS WATCH

Chester C. Carpenter, judge of the First Judicial District, 1881-1886, was being examined upon proceedings supplementary to execution before Judge Moses Hallett in United States District Court. The examination, growing very lengthy, failed to disclose the possession of any property by Carpenter. Judge Carpenter, growing more and more impatient, took a costly gold watch from his pocket to see the time. "Whose watch is that?" demanded Hallett. "Mine," said Judge Carpenter. "Turn that watch over to the Marshall," said Hallett. And Carpenter obeyed the order.

NO. 6
HALLETT WAS NEITHER DEAF NOR DUMB

District Court of the United States for the District of Colorado, sitting at Denver, Moses L. Hallett, Judge, presiding. Present, the usual officers and the late D. L. Webb, of the Denver bar, Mr. Webb standing near the bar separating the public from the space reserved for counsel.

Mr. Webb: "If it please the court, may I have an order in the case of—"

Judge Hallett (speaking gently): "We cannot hear you, sir."

Mr. Webb (moving to the center of the court room): "MAY I HAVE AN ORDER IN THE CASE OF—"

Judge Hallett (also speaking louder): "WE CANNOT HEAR YOU, SIR."

Mr. Webb (at the bench itself and shouting): IF THE COURT PLEASE, I DESIRE—"

Judge Hallett (with a roar): "WE CANNOT HEAR YOU, SIR. WE WILL HEAR YOU ON THURSDAY, SIR."

NO. 7—ANOTHER CHARLES S. THOMAS STORY (THER'RE MILLIONS)

Scene: United States District Court, sitting in Pueblo, under the guidance of the aforesaid Judge Hallett. Present, among others: Charles S. Thomas, for plaintiff; John M. Waldron, for Colorado Fuel and Iron Co., defendant. Mr. Waldron's voice was powerful and carrying and on occasion he used it with great vociferousness and effect. Senator Thomas had promised, it appeared, to produce, and had not produced, Casimiro Barela, of Trinidad, as a witness.

Mr. Waldron (to the court): "Where is Casimiro Barela?"

The Court: "I do not know, Sir."

Mr. Waldron (turning to the jury and raising his voice): "Gentlemen of the jury, WHERE IS CASIMIRO BARELA?"

The Court: "Ask Mr. Thomas, Sir."

Mr. Waldron (turning to counsel's table, where Senator Thomas is busily writing, and thundering): "WHERE IS YOUR WITNESS, CASIMIRO BARELA?"

Mr. Thomas (without looking up): "He is listening to you, Mr. Waldron."

Mr. Waldron (looking around the court room): "WHERE? WHERE, SIR?"

Mr. Thomas: "In Trinidad."

NO. 8—A TWENTY CENT BILL OF EXCEPTIONS

A divorce case of particular flavor was being tried before the late Judge George W. Allen, and the court had ordered the public excluded. Simon Taylor Horn, of the Denver bar, knocks at the court room door.

Bailiff: "What can I do for you, Mr. Horn?" Mr. Horn: "I want to enter the court room." Bailiff: Soory, sir; everyone is excluded; court's order." Mr. Horn (sees Judge Allen through the door): If the court please, may I come in?" Judge Allen: No, sir. Without exception the public is excluded." Mr. Horn: "Save an exception."

The block of granite which was an obstacle in the pathway of the weak, becomes a stepping stone in the pathway of the strong.—*Carlyle.*

It is just as easy to form a good habit as it is a bad one. And it is just as hard to break a good habit as a bad one. So get the good ones and keep them.—*President McKinley.*

A good heart is a letter of credit.—*Bulwer.*

• Supreme Court Decisions •

MUNICIPAL CORPORATIONS—NEGLIGENCE OF—EVIDENCE OF—INSTRUCTIONS IN—*Wold vs. City of Boulder*—No. 12705—*Decided May 9, 1932*—*Opinion by Mr. Justice Burke.*

1. Verdict of the jury, when based upon disputed evidence, will not be disturbed unless wrong beyond question.

2. The exclusion of photographs as evidence is not prejudicial, when they merely tend to show what has already been established by other evidence beyond question.

3. In a suit against the municipality, to recover damage for falling on an icy sidewalk, the testimony of a witness for the defendant, that he had never seen ice formed at the place in question is admissible, when the plaintiff's witnesses have already made contrary statements.

4. Municipal corporation is not primarily liable for injuries suffered by a pedestrian because of a defect on the sidewalk. The liability of a city arises, if at all, only after it has had reasonable time, after acquiring or being charged, with knowledge of the defect, to remedy it. An instruction to this effect is not error. Evidence of absence of complaints concerning such defects is therefore admissible.

5. An instruction limiting the cause of action to the negligence alleged in the complaint, is not error.—*Judgment affirmed.*

MANDAMUS—JURISDICTION OF COURTS TO GRANT—*Laizure v. Judge of County Court of Pueblo County*—No. 13094—*Decided May 9, 1932*—*Opinion by Mr. Justice Butler.*

1. When in a divorce action the plaintiff, after obtaining her findings of fact and conclusions of law, has applied to set them aside and dismiss the suit and the court refuses to do so; and when after the expiration of six months, the defendant applies for a decree of divorce and the court has refused his application, application for a writ of mandamus should be made to the district court, unless it appears that there is reason to apply to the supreme court.

2. For purposes of mandamus, the district court is a superior tribunal to the county court.

3. The mere fact that the county and district courts have jurisdiction to grant divorces does not prevent the county court from being an inferior court. The two courts have concurrent jurisdiction only where the plaintiff seeks alimony in excess of $2,000.00. Under the present system, appeal from the county to the district court may be had and there is no reason to distinguish between divorce cases and other cases.—*Petition denied.*

STARE DECISIS—*Craddock Estate v. Palmer*—No. 13099—*Decided May 16, 1932—Opinion by Mr. Justice Burke.*

1. Where, after entry of finding of fact in divorce case, but before final decree, the wife dies, and the District Court after expiration of six months entered a final decree finding that cause of action survived and decreeing that husband had no right, title or interest in any property left by the deceased wife and such judgment is affirmed by this court, it became the law of the case.

2. The husband cannot thereafter attempt to re-litigate such issue by filing a petition for determination of heirship in County Court and on a judgment adverse to his alleged right as an heir, sue out writ of error in this Court and re-litigate the same question by merely bringing a different action. —*Judgment affirmed.*

ESTOPPEL—LIABILITY ON BOND—*In the Matter of the Assignment of Albert H. Stockham, et al. v. Jack, as Receiver*—No. 12898—*Decided May 16, 1932—Opinion by Mr. Justice Alter.*

1. Where the President of a bank signed as surety the bond of the cashier of the same bank in 1917, and the Cashier in 1922 was elected Vice President in which office he remained until 1927 when he was again elected cashier and between 1922 and 1929 a shortage occurred in his accounts in excess of the penalty in the bond, and thereafter the President made an assignment for the benefit of creditors and the bank went into Receivership, and Receiver filed claim with assignee of President for full penalty of bond, order allowing claim in full was not error.

2. Where in 1929 the bank examiner, before the bank failed, objected to the bond and the President assured him it was good and in full force and effect, the assignee of the President is estopped from setting up the defense that the bond had expired in 1922 by the Cashier's vacating his office and being elected Vice President.—*Judgment affirmed.*

DEEDS—CONVEYANCE FOR SUPPORT DURING LIFE—GROUNDS FOR SETTING ASIDE—*Potter, et al. v. Coombs, et al.*—No. 13079—*Decided May 16, 1932—Opinion by Mr. Justice Butler.*

1. Where a woman 65 years of age conveys her farm worth $30,000 to her physician and confidential adviser for a consideration of his paying to her annually during the rest of her life $1,800, she reserving a life estate therein, and further providing that upon failure to make any required payments, the doctor should reconvey the property and forfeit as liquidated damages and as rental, all payments, theretofore made, a failure to make the annual payment for two successive years or to pay the taxes work a forfeiture of the deed and a decree providing for payment of the balance due up to the death of the grantor or for a reconveyance of the real estate, was proper.

2. In such a case it is not necessary to allege or prove fraud.

3. Failure to perform the stipulation for support is a sufficient ground for setting aside the deed without any showing of fraud.—*Judgment affirmed.*

CARRIERS—JURISDICTION OF PUBLIC UTILITIES COMMISSION—COMMON CARRIERS—*Burbridge vs. The Public Utilities Commission*—No. 12906—*Decided May 23, 1932—Opinion by Mr. Justice Moore.*

1. The court below affirmed the findings and order of the Public Utilities Commission, which found that Burbridge was a motor vehicle, or common carrier, operating without a certificate of public convenience and necessity and further ordered him to cease and desist from operating as a motor vehicle carrier unless he shall have obtained a certificate of public convenience and necessity.

2. The Statutes of Colorado define *motor vehicle carrier* as one who, among other things, indiscriminately accepts, discharges and lays down either passengers, freight, or express, or who holds himself out for such purpose by advertising or otherwise.

3. The evidence shows that Burbridge operated four trucks transporting freight between Denver, Greeley, Brighton, and Eaton, under contract, either oral or written, for six business firms and in addition to this, accepted freight from numerous shippers upon the request of the six firms that he contracted with, which freight was delivered to the various branches of the said six firms that he was under contract with.

4. Such evidence fails to show that Burbridge did indiscriminately accept, discharge, and lay down, freight or that he held himself out for such purpose by advertising or otherwise.

5. Chapter 134 Session Laws 1927 was not intended to and does not regulate private motor vehicle carriers for hire. It regulates only common carriers engaged in the business of transporting by motor vehicle passengers, freight or express, for hire.

6. Burbridge was not, therefore, a common carrier as defined by the act.—*Judgment reversed.*

ATTORNEY AND CLIENT—PRINCIPAL AND AGENT—LOANS—PRINCIPAL'S LOSS—*Hentzell vs. Hildebrand et al.*—No. 13072—*Decided May 23, 1932—Opinion by Mr. Justice Butler.*

1. Hildebrand obtained a judgment below against Hentzell cancelling a promissory note and deed of trust. Mitchell, a lawyer, from time to time, sold secured notes to Hentzell and Hentzell loaned money through Mitchell as his attorney and agent, Mitchell examining the abstract of title and attending to the drawing of the papers. As a result, Mitchell became indebted to Hentzell for $1200.00. Hildebrand applied to Mitchell for a loan of $3000.00. The land being encumbered by a federal loan of $1800.00, Mitchell submitted the application to Hentzell, who told Mitchell that he would make the loan provided the title was all right and that Mitchell would repay the $1200.00 to Hentzell or pay that amount to the Hildebrands as part of the loan. The federal loan was to be paid out of the $3000.00. Mitchell obtained Hildebrands' note for $3000.00 and their deed of trust, and for the purpose of paying off the federal loan, Hentzell gave Mitchell sufficient, together with the $1200.00 owing by Mitchell to pay off the federal loan.

Mitchell did not pay off the loan, converted the money to his own use, and paid nothing to the Hildebrands.

2. The trial court was right in holding that Mitchell was Hentzell's agent in the transaction and that under the circumstances above that Hentzell and not the Hildebrands should bear the loss.

3. Judgment cancelling the note and deed of trust is justified by the evidence and the law.—*Judgment affirmed.*

APPEAL AND ERROR—UNLAWFUL DETAINER—NECESSITY OF DEPOSITING RENT ON APPEAL—*Routen vs. J. & O. Ranch Company*—No. 13087—*Decided May 23, 1932—Opinion by Mr. Justice Butler.*

1. In an unlawful detainer action before a justice of the peace, the J & O Ranch Company obtained judgment against Routen for possession of land. Appeal was taken to the County Court. The two bonds were filed and J & O Ranch Company filed motion to dismiss the appeal because of Routen's failure to deposit rent, and the appeal was dismissed.

2. Upon an appeal from the judgment of a justice of the peace in an unlawful detainer action founded upon non-payment of rent, the statute requires the defendant to file two bonds and also deposit with the justice of the peace the amount of rent found due and thereafter, upon appeal, the rent must be deposited with the Clerk of the appellate court as and when due.

3. Such provision in regard to the deposit of rent is not applicable where the rent was not payable in money, but was payable in one half of products from all livestock, including poultry. In such case it cannot be seriously contended that during the pendency of appeal the tenant should deliver either to the justice of the peace or the clerk of the appellate court livestock, poultry, eggs and other products from the rented premises.—*Judgment reversed with directions to set aside judgment of dismissal and re-instate the case on appeal.*

PRINCIPAL AND AGENT—LIABILITY OF AGENT TO PRINCIPAL FOR NEGLIGENCE IN HANDLING LOAN—*The Colorado Investment and Realty Company vs. Stubbs*—No. 12422—*Decided May 23, 1932—Opinion by Mr. Justice Hilliard.*

1. Where defendant is engaged in making farm loans and in buying and selling farm loans and the plaintiff was an investing customer, and in 1922, sold a $5,000. loan to plaintiff, secured by a first deed of trust due in five years; and where the defendant undertook to handle the collection of interest and see that the taxes were kept up and where it appeared that the maker of the loan defaulted in the interest for several years and defaulted in the payment of taxes during the entire period and the defendant failed to inform the plaintiff of these facts, but assured the plaintiff during the period from 1922 to 1926 that they were attending to the matter and that the payments were being promptly made of interest and taxes and did not disclose the true situation to the plaintiff until four years after the loan was made, at which time the security was so depreciated that the loan was valueless, the

plaintiff was entitled to recover from the defendant the full principal of the note and unpaid interest.

2. It is no defense to such an action that at most the defendant's failure to advise plaintiff promptly of the defaults operated only to postpone action and that there was no certainty that with knowledge the plaintiff would have proceeded at once to foreclose or take other steps to protect his interests.

3. From the inception of plaintiff's ownership of the note, defendant was his agent expressly charged and impliedly required to keep its principal informed as to any circumstances coming to its knowledge calculated in reasonable prospect to impair the security for the loan.

4. The question is not what the plaintiff would have done, but rather, what he could have done had his agent been faithful.

5. The measure of damages was the full face of the note and interest. Clearly the agent was negligent in matters essentially material; but for the agent's derelictions, plaintiff would have been in position to protect his investment. In such circumstances, the amount of the claim is the proper measure of damages.—*Judgment affirmed.*

MUNICIPAL CORPORATIONS—LIABILITY FOR FALLING ON ICY SIDEWALK—CONTRIBUTORY NEGLIGENCE—*City and County of Denver vs. Hudson*—No. 12664—*Decided May 23, 1932—Opinion by Mr. Justice Campbell.*

1. Plaintiff below had judgment against the city for damages in the sum of $1650. sustained by falling on an icy and slippery sidewalk. The defendant urged error in that the evidence of the plaintiff showed as a matter of law that she was guilty of contributory negligence in going upon an obviously dangerous sidewalk having at the time knowledge of its dangerous condition and also knowledge of one or more other safe and convenient ways by which the dangerous condition of the sidewalk on which she slipped and fell could have been avoided; and that her failure to use the safe way or ways, of which she knew, and her choice of a way she knew to be unsafe, constituted the sole and proximate cause of her injuries.

2. If the undisputed evidence shows that the plaintiff had knowledge of the unsafe condition of the sidewalk in question and that the adjoining street or sidewalk afforded a safe and suitable way for travel, plaintiff might be guilty of contributory negligence as a matter of law.

3. But, where there is testimony by the plaintiff that on the night previous to the injury several inches of snow had fallen upon and still covered the sidewalk in question and also the adjacent street and sidewalk which tended to show that not only the sidewalk on which plaintiff fell, but also the adjoining street, itself, and the sidewalk on the opposite side of the street were also in a bad condition by reason of the snow and ice, the plaintiff cannot be held guilty of contributory negligence as a matter of law in choosing the particular walk that she traveled on.

4. Reasonable minds might differ as to the question of the plaintiff's contributory negligence; hence, the trial court was right in submitting this issue to the jury.—*Judgment affirmed.*

SALES—WARRANTY—WAIVER OF WARRANTY—BY EXTENDING NOTE—*Emerson-Brantingham Implement Co. vs. Miller*—No. 12642—*Decided May 31, 1932—Opinion by Mr. Justice Hilliard.*

1. Plaintiff sued on promissory notes. Defendants admitted execution and delivery, but alleged they were part of purchase price of tractor, which defendants were induced to purchase through false representations as to its efficient usability. Alleged failure consideration and in a counter claim recovered in the court below the amount of note defendants had previously paid on the purchase price.

2. Under such circumstances, plaintiff cannot rely upon a provision of the written contract to purchase providing that all claims for damages by reason of non-performance of the machinery are waived. The court will not construe such a contract so as to work a forfeiture of rights except in very clear cases.

3. The judgment of the court below in favor of the defendant on the counter claim was grounded on the warranty that the tractor was well made, of good material and would do as good work as any other machine under like circumstances. The evidence was clear that the tractor did not comply with this warranty.

4. The rule that in case of rescission it is the duty of the party to return the tractor at the place where it was originally delivered does not obtain where the defendant offered to return the tractor and demanded surrender of their notes and the defendant refused such offer and demand. Under such circumstances, actual delivery would be useless and the law does not require useless or unnecessary things.

5. While ordinarily the renewal of a note after knowledge of defects in the machine would estop defendants from defending on account of breaches of warranty, yet in this case, there is no implication of law that the parties were attempting to adjust past differences or to shut off defenses arising out of past complaints, but that the transaction is to be understood merely as extending the time in which each of the parties is to perform his contract. The plaintiff's breach of warranty was not unconditionally consummated at the time the renewal note was given, for the reason that the warranty and the concurrent promise on the part of the plaintiff was not merely that there would be no defects, but if there were defects, the plaintiff would remedy them.—*Judgment affirmed.*

ATTORNEYS — DISBARRMENT — GROUNDS OF — *People vs. Warren* — No. 12652—*Decided May 31, 1932—Opinion by Mr. Chief Justice Adams.*

1. Where the evidence shows that an attorney makes collections without authority and appropriates the money to his own use, and by false and fraudulent pretenses, induces one to cash a worthless check for him and gives check for clothing on a bank where he has no funds, and is later convicted of forgery, such a series of crimes shows that he is utterly unfit to engage in the practice of law.

2. In view of the record in this case, respondent is disbarred.

WILLS — WAIVER OF WIDOW'S ALLOWANCE — *Vincent vs. Martin* — No. 12763—*Decided May 31, 1932—Opinion by Mr. Justice Moore.*

1. Vincent prosecutes error to review order of the County Court disallowing her claim for widow's allowance. It appears that during his lifetime, Vincent and his wife entered into a contract providing that he would will and bequeath to his wife the sum of $15,000.00 and all furniture and household goods and in consideration thereof, she agreed to accept the same in full satisfaction of any and all rights of dower, statutory allowances and rights of inheritance as surviving widow. Pursuant to this contract, will was executed by Vincent with the written approval and acceptance of the terms by the wife.

2. There was no failure of consideration. Neither fraud nor undue influence was charged or proven.

3. The words used in the contract "statutory allowances" was intended to and did include the widow's allowance.

4. While the waiver of a widow's allowance must be express, this does not mean that the words "widow's allowance" must be used in the waiver where the term used in the waiver clearly comprehends that it includes "widow's allowance."—*Judgment affirmed.*

MUNICIPAL CORPORATION—HOME RULE CITY—POLICE COURT—CREATION OF—*The People vs. Pickens*—No. 13035—*Decided May 31, 1932—Opinion by Mr. Justice Burke.*

I.

The power provided by Charter for the Mayor to appoint two Justices of the Peace, one of whom shall be designated to perform the duties of Police Magistrate, does not negative the power of the council to create a Municipal Court. No exclusive jurisdiction is conferred by the Charter, and the power to so appoint and designate Justices rests upon the same constitutional grant as the power to create the office here in dispute.

II.

A Municipal Court need not be established by charter provision. It can be created by ordinance.—*Judgment affirmed.*

PRINCIPAL AND AGENT—KNOWLEDGE—RATIFICATION—FINDINGS OF FACT —*Zang Company vs. Reilly*—No. 12686—*Decided May 31, 1932—Opinion by Mr. Justice Campbell.*

I.

Assuming that a mere secretary of a corporation is not invested with authority to enter into contracts of general employment, nevertheless, when such a secretary assumes to have such power and, to the knowledge of a Board of Directors of a corporation, exercises it in making such contracts, the contract will be upheld as being that of the principal corporation.

II.

The findings of fact by a jury, when supported by evidence, will be sustained.—*Judgment affirmed.*

BODY JUDGMENTS—LIABILITY OF AUTHORITIES—CASE OF—GOOD CONDUCT APPLIED TO—*Hershey, et al, vs. The People ex rel Johnson*—No. 13077—*Decided May 31, 1932—Opinion by Mr. Justice Butler.*

I.

One confined under a body execution on a judgment recovered in a tort action is not "sentenced" for a crime, and the provisions of the statute allowing prisoners sentenced for crimes time off for good behavior does not apply in such a case.

II.

Under the common law which applies in Colorado in absence of statute if an officer who has a prisoner in charge, permits a voluntary or negligent escape the execution creditor may recover the damages actually sustained. The presumption is that the creditor loses the entire debt by such an escape but the poverty or insolvency of the debtor can be introduced in mitigation of damages.

III.

Where an officer has in his custody a man confined under a body execution and releases him under the advice of the Attorney General and the City Attorney, such a release does not relieve the officer from liability. Under such circumstances, the escape is deemed a negligent escape.

IV.

Under such circumstances as outlined above, the execution creditor is entitled to recover whatever damages he has sustained as the result of the wrongful release. Prima facie the amount of his damage is the amount of his judgment against the confined debtor. The defending officers are, however, entitled to prove, if they can, the execution debtor's poverty or insolvency in mitigation of damages. It is error to exclude such proof.—*Judgment reversed and remanded.*

PUBLIC UTILITIES—CITY ORDINANCES AFFECTING—ORDINANCES—INTERPRETATION OF—*Canon City vs. Kaughman*—No. 12688—*Decided June 6, 1932—Opinion by Mr. Justice Hilliard.*

I.

An ordinance, providing that the right to operate an automobile or other conveyance for hire in the city in any of the parks, over any roads or highways owned or controlled by the city shall be licensed and subject to licenses issued by the City Council, does not affect a vehicle operating under a Certificate of Convenience and Necessity when it is shown that business was not solicited or accepted in the city that passed the ordinance.

II.

It is unnecessary to determine as to whether or not a public utility may be required to procure a license from a municipality under the facts of this case.—*Judgment affirmed.*

CONTRACTS—FRAUD—INCEPTION OF—RATIFICATION—*Duke vs. Cregan*—No. 12601—*Decided June 6, 1932—Opinion by Mr. Justice Butler.*

I.

Plaintiff was induced to purchase an interest in the Sage Transfer and Storage Company upon representations that the business made certain profits during several prior years. As a matter of fact, the figures given as profits included bad debts. In addition to this, the amount shown as having been paid for rent was inflated considerably over the actual amount paid. A provision in the contract set out that the purchaser was acting not as the result of his own investigation but in reliance upon the representations of the sellers. Where the Court below found that the purchaser actually bought in reliance upon the representations of the seller and that finding is supported by the evidence, it will not be disturbed in the higher Court.

II.

A contention that the plaintiff, by accepting his salary from the company, affirmed the contract is unsound and the plaintiff is not required to return the salary for it was received from the company and not from the defendants. The lower Court found that the plaintiff received his salary before he knew of the falsity of the representations made to him.—*Judgment affirmed.*

INSURANCE—LABOR UNIONS—PREMIUMS—EFFECT OF DELINQUENCY IN PAYING—*Brotherhood of Maintenance of Way Employees vs. Nolan*—No. 12505—*Decided June 6, 1932—Opinion by Mr. Justice Campbell.*

I.

Where, by a course of dealing, a company or organization, such as the one in question, has led a member to believe and understand that prompt payment of assessments will not be required but that they will be accepted and received after due and that the member will be considered in good standing notwithstanding the delay in payment, the company will be held to have waived prompt payment and the member will be deemed to be in good standing for such reasonable time after an assessment is delinquent as has theretofore customarily been allowed him in which to pay dues.

II.

Where it is established that an insurance society accepted payment of premiums after the insured was in default and that it was aware of such default, a waiver is established.

III.

Where dues or premiums, payable on November 1, were not paid until November 22, but at that time were received without question, the company will be deemed to have waived its requirement for prompt payment.—*Judgment affirmed.*

Mr. Justice Butler dissenting: The law set down in the majority opinion is correct but not applicable to the facts in hand. The company here involved was not an insurance company but a trade union. Its receipts are not premiums but dues. The dues are paid for membership and, according to

the by-laws, if they are paid promptly, certain death benefits are payable. The death benefits are an inducement to prompt payment but are by no means the sole purpose of the dues. The judgment should be reversed.

WORKMEN'S COMPENSATION—DURATION OF DISABILITY—*Industrial Commission vs. Roper*—No. 13003—*Decided June 6, 1932—Opinion by Mr. Justice Alter.*

I.

A finding by the referee for the Industrial Commission, sustained by a supplemental award of the Commission to the effect that a claimant's disability has terminated, must be supported by the evidence and, upon an action in the District Court to set aside an award of the Commission, it is the duty of the Court to set aside such a finding where the record discloses no supporting testimony.

II.

Under rule 2, Rules of Procedure of the Colorado Industrial Commission, the Court determined the duration of the disability. This rule must be pled. This was not done here.—*The judgment of the District Court is affirmed except as to the finding concerning the duration of disability.*

MANDAMUS—POLICE POWER—LEGISLATIVE CONTROL OF HOME RULE CITIES—*People, ex rel. Hershey vs. Begole*—No. 12650—*Decided June 20, 1932—Opinion by Mr. Justice Butler.*

1. Refusal of the auditor of the City and County of Denver to approve a demand, on the ground of want of lawful authority to approve it, amounts to a refusal to act upon it. Mandamus is the proper remedy to compel an audit.

2. Act of 1907 (S. L. 1907, c. 112; C. L. c. 29), establishing registration districts for vital statistics and imposing upon the city or county in which a registration district is situated, after approval by the auditing official of such city or county, liability for the compensation of the local registrar, is a valid exercise of the police power of the state.

3. Article XX of the state constitution imposes no limitation upon the power of the legislature to control "home rule" cities in matters of public, as distinguished from matters of local, nature.—*Judgment reversed with instructions.*

IRRIGATION DISTRICTS—DISSOLUTION—BONDS—INTEREST AFTER MATURITY—*Clint O. Heath vs. The Green City Irrigation District*—No. 12839—*Decided June 20, 1932—Opinion by Mr. Justice Campbell.*

1. Where the owner of irrigation bonds was tendered by the County Treasurer of Weld County, the full face value of his bonds, with interest thereon, to maturity, he is not in a position to question the validity of a dis-

solution decree of the District Court in which all the other creditors of the District who were parties to this proceeding, have acquiesced.

2. The bondholder is not entitled to interest upon the same after maturity or interest upon the attached coupons which accrued thereafter.—*Judgment affirmed.*

NOTES—INDIVIDUAL LIABILITY OF OFFICER—MISREPRESENTATION EVIDENCE—*Hollis vs. Commercial National Bank*—No. 12714—*Decided June 20, 1932—Opinion by Mr. Justice Hilliard.*

1. In an action on a note by the bank against the president of a Company in his individual capacity, alleging misrepresentation, and where the only evidence of misrepresentation is a letter that was not produced at the trial, held error to introduce secondary evidence, without first showing that the letter was directed to the bank; that the president of the bank, in whose custody the letter was given, could not be found; or that any effort was made to find him, what he knew or what disposition was made of the letter.—*Judgment reversed and remanded.*

LIFE INSURANCE—AMBIGUITY OF TERMS OF POLICY—CONSTRUCTION—*Shinall vs. Prudential Insurance Co.*—No. 12776—*Decided June 20, 1932—Opinion by Mr. Justice Burke.*

The date of the policy and the date for payment of annual premiums was March 21. The first premium was not paid until April 21st. The insured allowed the next annual premium, supposedly due March 21, to lapse, and died June 4th. The insurance company contended that the sixty days of grace had expired before the death of the insured. The application, which constituted a part of the contract, provided that the policy should not take effect until payment of the premium, whereas the policy was dated approximately one month prior to such payment. The grace clause recited: "If this policy after being in force one full year from its date shall lapse for non-payment of premium, the company will continue in force the insurance . . . for a period of sixty days from the due date of such premium." The question was whether the policy came into force on March 21 or on April 20, and, if not until the latter date, whether or not it could be said to have lapsed before April 20th of the ensuing year.

Held: 1. The terms of the policy were ambiguous as to the time when the policy came into force, and, consequently, were ambiguous concerning whether or not it had been in force for one full year prior to March 21, the date for payment of the premium.

2. Where the terms of an insurance policy are ambiguous concerning the date on which the policy will lapse for non-payment of premium, the ambiguity should be resolved against the insurance company as the writer of the doubtful document.—*Judgment reversed.*

WORKMEN'S COMPENSATION—AWARD—REVIEW—*Lockard vs. Industrial Commission et al.*—No. 13096—*Decided June 20, 1932—Opinion by Mr. Justice Hilliard.*

No error perceived in performance by District Court of instructions previously issued in this case by this Court. Rules of law previously stated in Industrial Commission et al vs. Lockard, 89 Colo. 428, 3 Pac. (2d) 416; Industrial Commission vs. Lockard, 90 Colo. 333, 9 Pac. (2d) 286, re-affirmed.—*Judgment affirmed.*
